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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 155

TOWN OF LARGO, IN PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

HUGH RICHMOND.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Counsel for Petitioner.

GEO. L. BROWN,
CYRIL E. POGUE,
Of Counsel.

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HUGH RICHMOND.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of the Matter Involved.

This is an action at law, originating in the United States District Court, Southern District of Florida, and was based upon a diversity of citizenship. The cause of action was based upon bonded obligations issued by the City of Largo, and petitioner defended upon the ground that it had no

part in the issuance of said obligations, and that the same were null and void. A stipulation of facts in lieu of testimony was filed in the cause (R. 30), and from a judgment holding petitioner liable as a successor to the issuing municipality, petitioner appealed to the Circuit Court of Appeals, Fifth Circuit. Judgment sustained (109 F. R. 2d 740).

The facts briefly stated are as follows:

The petitioner was incorporated in 1913 as the TOWN of Largo, embracing 360 acres of land (App. 1 & 2). In 1925, the Florida Legislature passed two Special Acts, the purpose of which was to abolish the Town and create the CITY of Largo, embracing the territory of this petitioner and other land to the extent of 4,480 acres (App. 3 & 4). The new municipality, City of Largo, exercised jurisdiction over all the territory, put in numerous improvements and issued the obligations upon which this suit is based. Afterward, in 1927, certain citizens instituted *quo warranto* proceedings in which a final decision was rendered on July 11, 1933, by the Supreme Court of Florida, holding that the entire act which undertook to create the City of Largo was void as violative of Section 12, Declaration of Rights, Constitution of Florida, and directed an ouster "As to entire annexed territory" (110 Fla. 21, 149 So. 420). Upon rendition of this decision and the judgment of ouster, the "City" officials retired, taking their records, etc., with them (R. 35); thereupon the citizens of the territory originally embraced in this petitioner elected officers and resumed municipal function as the TOWN of Largo under its original Charter (App. 1 & 2), and has, at all times, disregarded all the acts, obligations and liabilities of the City of Largo (R. 35).

No election was held to authorize the issuance of the bonds, but the bonds recited, in effect, that all things necessary to be done had been done, and the Legislature after-

ward validated said bonds, by Special Acts, as obligations of the City of Largo.

Petitioner contends that the bonds, as such, are void because the issuing municipality never legally existed, either *de jure* or *de facto*, because the Legislature was without power to create such a municipality, and, further, because the bonds were issued without a vote of the freeholders (R. 30), and that the Legislature could not validate a bond which was absolutely void.

(See *Hillsborough County* v. *Temple Terrace Assets Co.*, 149 So. 473, 111 Fla. 368, and numerous other authorities.)

Petitioner also contends that the court erred in holding this petitioner to be a successor to the City of Largo, because this petitioner succeeded to nothing belonging to the City of Largo except a small part of the improvements installed by the City in the territories of this petitioner (R. 35).

II.

Reasons Relied On for the Allowance of the Writ.

1. The original decision of the Circuit Court of Appeals was rendered February 17, 1940, after which a petition for rehearing was filed and denied by the Circuit Court of Appeals, without opinion, on March 15, 1940; therefore, this petition is timely under the rules of this Court.

2. The decision rendered in this cause is in conflict with applicable decisions of the Supreme Court of Florida, construing the Constitution of Florida, the local law under which the cause of action arose, and other similar laws in this State.

3. The effect of the decision and judgment is to hold this petitioner liable for the debt of another, and will deprive petitioner of its property without just compensation, in vio-

lation of Section 12 of the Bill of Rights, Constitution of Florida, and Article 14 of the Amendments to the Constitution of the United States.

4. The foregoing questions, as points of law, were raised in the lower court in a Motion to Strike the Bill of Complaint (R. 17), and were presented to the Appellate court (R. 50-51), and again in a petition for rehearing (R. 60-64); also they were presented as matters of fact, and as a defense in petitioner's answer to the Bill of Complaint (R. 19-29), and, in point of fact, were proven by stipulation of counsel (R. 30).

WHEREFORE your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Fifth Circuit, said court to certify and send to this Court a full and complete transcript of record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket #9235, *Town of Largo in Pinellas County, Florida, Appellant,* v. *Hugh Richmond, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States and that the judgment herein of the said Circuit Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated June 6th, 1940.

TOWN OF LARGO,
IN PINELLAS COUNTY, FLORIDA,
By M. A. MCMULLEN,
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Clearwater, Florida.

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